

CHAPTER 16

SHORELAND/WETLAND ZONING

(Cr. #091-18)

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16.01 STATEMENT OF PURPOSE. (Rep. & recr. #96-12)

This chapter is adopted pursuant to the authorization in §§61.35, 61.351, 87.30 and 144.26, Wis. Stats. The shoreland/wetland overlay district is intended to be used to maintain safe and healthful conditions to prevent water pollution, to prevent fish spawning grounds and wildlife habitat, to preserve shore cover and natural beauty, and to control building and development in wetlands. When development occurs in a wetland, the development should occur in a manner that minimizes adverse impacts upon the wetland.

16.02 SHORELAND/WETLAND OVERLAY DISTRICT. (Rep. & recr. #96-12)

The shoreland/wetland overlay district includes all shoreland wetlands five acres or larger that are shown on the Wisconsin Wetland Inventory map stamped final on July 25, 1990 hereby adopted and made part of this chapter.

16.03 INTERPRETATION. (Rep. & recr. #96-12)

Where a provision of this chapter, including definitions, is required by a standard in chapter NR117, Wis. Adm. Code, the provision shall be interpreted in light of the chapter NR117 standards in effect on the date of adoption of this chapter [Oct. 1, 1996] or in effect on the date of the most recent text amendment to this chapter.

16.04 PRINCIPAL USES.

- (1) The following uses must be carried out without filling, flooding, draining, dredging, ditching, tiling or excavating:
 - (a) Hiking.
 - (b) The harvesting of wild crops, such as marsh hay, ferns, moss, wild rice, berries, tree fruits and tree seeds, in a manner that is not injurious to the natural reproduction of such crops.
 - (c) The practice of silviculture, including the planting, thinning and harvesting of timber.
 - (d) The pasturing of livestock.
 - (e) The cultivation of agricultural crops.

- (2) The following uses may involve filling, flooding, draining, dredging, ditching, tiling or excavating to the extent specifically provided below. A zoning permit is not required for such uses.
- (a) Temporary water level stabilization measures in the practice of silviculture, which are necessary to alleviate abnormally wet or dry conditions that would have an adverse impact on the conduct of silvicultural activities if not corrected.
 - (b) Dike and dam construction and ditching for the purpose of growing and harvesting cranberries.
 - (c) Ditching, tiling, dredging, excavating or filling done to maintain or repair existing agricultural drainage systems only to the extent necessary to maintain the level of drainage required to continue the existing agricultural use.
 - (d) Limited excavating and filling necessary for the construction and maintenance of fences for the pasturing or livestock.
 - (e) Limited excavating and filling necessary for the construction and maintenance of piers, docks and walkways built on pilings.
 - (f) Limited excavating and filling necessary for the maintenance, repair, replacement and reconstruction of existing town and county highways.
 - (g) The maintenance and repair of existing town and county bridges.

16.05 CONDITIONAL USES.

- (1) The construction and maintenance of roads which are necessary to conduct silvicultural activities or are necessary for agricultural cultivation, provided that:
- (a) The road cannot as a practical matter be located outside the wetland.
 - (b) The road is designed and constructed to minimize the adverse impact upon the natural functions of the wetland and meets the following standards:
 - 1. The road shall be designed and constructed as a single lane roadway with only such depth and width necessary to accomplish the machinery required to conduct agricultural and silvicultural activities.
 - 2. Road construction activities are to be carried out in the immediate area of the roadbed only.

3. Any filling, flooding, draining, dredging, ditching, tiling or excavating that is to be done must be necessary for the construction or maintenance of the road.
- (2) The construction and maintenance of nonresidential buildings used solely in conjunction with raising of waterfowl, minnows or other wetland or aquatic animals or used solely for some other purpose which is compatible with wetland preservation if the building cannot as a practical matter be located outside the wetland, provided that:
 - (a) Any such building does not exceed 500-sq. ft. in floor area.
 - (b) Only limited excavating and filling necessary to provide structure support for the building is allowed.
- (3) The establishment and development of public and private parks and recreation areas, natural and outdoor education areas, historic and scientific areas, wildlife refuges, game bird and animal farms and fur animal farms, provided that:
 - (a) Any private recreation or wildlife habitat area must be used exclusively for that purpose.
 - (b) Ditching, excavating, dredging, dike and dam construction may be done in wildlife refuges, game bird and animal farms, fur animal farms and private wildlife habitat areas, but only for the purpose of improving wildlife habitat or to otherwise enhance wetland values.
- (4) The construction and maintenance of electric, gas, telephone, water and sewer transmission and distribution lines and related facilities by public utilities and cooperative associations organized for the purpose of producing or furnishing heat, light, power or water to their members, provided that:
 - (a) The transmission and distribution lines and related facilities cannot as a practical matter be located outside the wetland.
 - (b) Any filling, excavating, ditching or draining that is to be done shall be necessary for such construction or maintenance and must be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetlands.
- (5) The construction and maintenance of railroad lines, provided that:

- (a) The railroad lines cannot as a practical matter be located outside the wetland.
 - (b) Any filling, excavating, ditching or draining that is to be done shall be necessary for such construction or maintenance and shall be done in a manner designed to minimize flooding and other adverse impacts upon the natural functions of the wetland and the replacement and reconstruction of existing Village and county bridges.
- (6) The conditional uses herein shall be approved under application made pursuant to Section 17.43 of this Municipal Code.

16.06 PROHIBITED USES.

Any use that is not listed above as a principal or conditional use is prohibited, unless the wetland or a portion of the wetland has been rezoned by amendment of this chapter in accordance with §62.23(7)(d)2., Wis. Stats., and Ch. NR 117, Wis. Adm. Code.

16.07 ADDITIONAL APPLICATION REQUIREMENTS CONCERNING CONDITIONAL USES OF WETLANDS.

- (1) Such information shall be supplied to the Village Building Inspector to determine whether the proposed development will hamper flood flows, impair floodplain storage capacity or cause danger to human or animal life. This additional information may include plans, certified by a registered professional engineer or land surveyor, showing elevations or contours of the ground; fill or storage elevations; lowest floor elevations of structures; size, location and spatial arrangement of all existing and proposed structures on the site; location and elevation of streets, water supply and sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream; soil types and other pertinent information. Fee receipt from the Building Inspector for the fee required by the Village Board.
- (2) An application for a conditional use permit will be rejected without a hearing if either the Land Use Committee or the Village Board, acting pursuant to Section 17.43 of this Municipal Code, votes such rejection. In all other cases, the Land Use Committee shall fix a reasonable time and place for a public hearing on the application and give public notice thereof in accordance with the applicable requirements of the Wisconsin Statutes.
- (3) A copy of all notices for public hearings on applications for conditional uses in the floodland districts, including a copy of the application, shall be transmitted to the Wisconsin Department of Natural Resources (DNR) for review and comment. Final

action on floodland applications shall not be taken for 30 days or until the DNR has made its recommendation, whichever comes first.

- (4) Notice of public hearings on shoreland and shoreland/wetland conditional uses shall be mailed to the DNR district office at least 10 days prior to the hearing. A copy of any decision on any such conditional uses shall be mailed to the DNR district office within 10 days after it is granted or denied.

16.08 STANDARDS IN REVIEWING CONDITIONAL USES.

In reviewing the proposed conditional uses, the Planning Committee and the Village Board shall be guided by the following standards and requirements:

- (1) All conditional uses shall be in accordance with the purpose and intent of this chapter and shall not be hazardous, harmful, offensive or otherwise adverse to the environmental quality, water quality, shoreland cover or property values in the village and its communities.
- (2) Review of the site, existing and proposed structures, architectural plans, neighboring land and water uses, parking areas, driveway locations, highway access, traffic generation and circulation, drainage, waste disposal, water supply systems and the effect of the proposed use, structure, operation and improvement upon flood damage protection, water quality, shoreland cover, natural beauty and wildlife habitat.
- (3) Conditions, such as landscaping, architectural design, type of construction, construction commencement and completion dates, sureties, lighting, fencing, location, size and number of signs, water supply and waste disposal systems, higher performance standards, street dedication, certified survey maps, floodproofing, ground cover, diversions, silting basins, terraces, stream bank protections, planting screens, operational control, hours of operation, improved traffic circulation, deed restrictions, highway access restrictions, increased yards or additional parking may be required by the Planning Committee upon its finding that these are necessary to fulfill the purpose and intent of this chapter and the State Water Resources Act of 1965 and to meet the provisions of the state's flood plan and shoreland management programs.
- (4) Compliance with all other provisions of this chapter, such as lot width and area, yards, height, parking, loading, traffic, highway access and performance standards, shall be required of all conditional uses. Variances shall only be granted as provided in Section 17.40(2) of this Municipal Code.

- (5) With respect to conditional uses within shorelands, the standards set forth in §144.26(5), Wis. Stats., in particular as they relate to the avoidance or control of pollution.

16.09 REVIEW AND APPROVAL BY THE BUILDING INSPECTOR OF SHORELAND/FLOODPLAIN APPLICATIONS.

- (1) The Building Inspector may approve shoreland/floodplain conditional use permit applications under this chapter without a public hearing, provided that the applicant agrees to sign a contract setting forth the methods for eliminating erosion, sedimentation and pollution.
- (2) The Building Inspector may request technical assistance from any Village office, officer or department in review of shoreland/wetland conditional use permit applications prior to setting forth the contractual provisions. Such contractual provisions shall be in compliance with the standards set forth in Ch. 17 of this Municipal Code.
- (3) The applicant may request a public hearing if the applicant does not agree with the provisions of the contract or feels the public hearing is in the applicant's best interest.
- (4) The Building Inspector may require a formal conditional use public hearing where it is deemed that the subject land may be susceptible to flooding, concentrated runoff, inadequate drainage, adverse soil or rock formation, unfavorable topography, low bearing strength, erosion or any other feature likely to be harmful to the sensitive environment of the shoreland/floodplain areas or to the public interest to the Village.
- (5) The Building Inspector shall mail a copy of the application, together with all maps, plans and other documents submitted by the applicant to the Village Board, within which the subject land lies. The Village Board shall have the power to impose conditions on shoreland/floodplain conditional use applications which are more strict than those imposed by the Building Inspector. The Village Board shall have 20 days from the receipt of the application to notify the Building Inspector of the more strict conditions being imposed for inclusion in the contract.

16.10 APPEALS TO THE BOARD OF APPEALS. (Cr. #96-12)

- (1) Any person aggrieved or by any officer, department, board or bureau of the Village affected by any order, requirement, decision or determination of the Building Inspector under this chapter may appeal to the Board of Appeals as provided in Section 17.40 of the Municipal Code.

- (2) The procedure shall be as provided in Section 17.40, except that the notice of public hearing shall be published as a Class II notice under Ch. 985, Wis. Stats., and copies of the notice shall be mailed to the parties in interest and to the Milwaukee district office of the Department at least 10 days prior to the hearing.
- (3) The decision shall be in writing and shall state the specific facts which are the basis of the Board's determination. A copy of the decision shall be mailed to the parties in interest and to the Milwaukee district office of the Department within 10 days after the decision is issued.

16.11 AMENDMENTS. (Cr. #96-12)

- (1) This chapter, including any district boundaries or maps, may be amended in accordance with the requirements of §61.351, Wis. Stats. and NR117, Wis. Adm. Code as are in effect at the time of such amendments, and this chapter.
- (2) Wetlands in the shoreland/wetland zoning district may not be rezoned where the proposed rezoning may result in significant adverse impact upon any of the following wetland functions:
 - (a) Storm and flood water storage capacity;
 - (b) Maintenance of dry season stream flow or the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area or the flow of groundwater through a wetland;
 - (c) Filtering or storage of sediments, nutrients, heavy metals or organic compounds that would otherwise drain into navigable waters;
 - (d) Shoreline protection against erosion;
 - (e) Fish spawning, breeding, nursery or feeding grounds;
 - (f) Wildlife habitat; or
 - (g) Areas of special recreational, scenic or scientific interest, including scarce wetland types and habitat of endangered species.
- (3) Any proposed amendment to this chapter, whether text or map, shall be referred to the Plan Commission for its recommendation. Within 5 days of the referral of the proposed amendment to the Plan Commission the Clerk/Treasurer shall mail a copy of the proposed amendment to the Department. Prior to adoption of any amendment to this chapter, a public hearing shall be held thereon by the Village Board. Notice

of the public hearing shall be by publication of a Class II notice and mailing a copy to the Department's district office at least 10 days prior to the hearing.

- (4) Where the Department determines that a proposed rezoning may have significant adverse impact on any of the criteria listed in sub. (2) above, the Department shall notify the Village in writing, either prior to or during the public hearing on the rezoning. If the Department provides such a notice, the proposed amendment shall not become effective until more than 30 days have elapsed after mailing of the notice of the Village decision as required in sub. (3) above. If within the 30-day period, the Department notifies the Clerk/Treasurer that it intends to adopt a superseding shoreland/wetland zoning ordinance for the Village under §61.351(6), Wis. Stats., the proposed amendment shall not become effective until the superseding ordinance adoption procedure is completed or terminated.

16.12 DEFINITIONS. (Cr. #96-12)

As used in this chapter, the following words or terms shall have the meanings as set forth herein:

DEPARTMENT. The Wisconsin Department of Natural Resources.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures; the construction of additions or substantial alterations to buildings, structures or accessory structures; the placement of buildings or structures; ditching, lagooning, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of earthen materials.

DRAINAGE SYSTEM. One or more artificial ditches, file drains or similar devices which collect surface runoff or groundwater and convey it to a point of discharge.

ENVIRONMENTAL CONTROL FACILITY. Any facility, temporary or permanent, which is reasonably expected to abate, reduce or aid in the prevention, measurement, control or monitoring of noise; air or water pollutants, solid waste and thermal pollution, radiation or other pollutants, including facilities installed principally to supplement or to replace existing property or equipment not meeting or allegedly not meeting acceptable pollution control standards or which are to be supplemented or replaced by other pollution control facilities.

NAVIGABLE WATERS. Lake Superior, Lake Michigan, all natural inland lakes within Wisconsin, and all streams, ponds, sloughs, flowages and other waters within the territorial limits of this state, including the Wisconsin portion of boundary waters, which are navigable under the laws of this state.

ORDINARY HIGH-WATER MARK. The point on the bank or shore up to which the presence and action of surface water is so continuous as to leave a distinctive mark such as by erosion, destruction or prevent of terrestrial vegetation, predominance of aquatic vegetation, or other easily recognized characteristic.

SHORELANDS. Lands within the following distances from the ordinary high-water mark of navigable waters: 1,000' from a lake, pond or flowage; and 300' from a river or stream or to the landward side of the floodplain, whichever distance is greater.

SHORELAND/WETLAND DISTRICT. The zoning district, created in this shoreland/wetland zoning ordinance, comprised of shorelands that are designated as wetlands on the wetlands inventory maps which have been adopted and made a part of this chapter.

WETLANDS. Those areas where water is at, near or above the land surface long enough to support aquatic or hydrophytic vegetation and which have soils indicative of wet conditions.

WETLAND ALTERATION. Any filling, flooding, draining, dredging, ditching, tiling, excavation, temporary water level stabilization measures or dike and dam construction in a wetland area.

16.15 PENALTY.

Except as otherwise provided herein, any person found in violation of any provision of this chapter or any order, rule or regulation made hereunder shall be subject to a penalty as provided in Section 25.04 of this Municipal Code.